IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10536 of 1994

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANAIYALAL KASHIRAM JAISWAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10536 of 1994

MR MAHENDRA K PATEL for Petitioner No. 1

MS MANISHA SHAH A.G.P. for Respondent No. 1-2

NOTICE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 09/11/2004

ORAL JUDGEMENT

1. The petitioner has by way of this petition challenged the impugned order passed by first respondent

dated 18th February, 1991 whereby, the appeal preferred by the petitioner against the order of dismissal dated 5th December, 1990 by the Disciplinary Authority is rejected and the order of penalty of dismissal is confirmed by the Appellate Authority.

2. It is the case of the petitioner that he joined the service as constable on 28th October, 1983 and thereafter he was appointed as constable at Ellisbridge Police Station on 7th August, 1984 after completion of training as constable. The petitioner was issued chargesheet on 2nd December, 1988 on the ground that he had committed bigamy and that he was also involved in illegal activities of trafficking woman. In view of that the petitioner submitted his statement of defence on 31st January, 1990 and inquiry proceedings were initiated against the petitioner. On completion of the inquiry, the petitioner was issued with showcause notice dated 14th September, 1990 whereby the petitioner was called upon to showcause as to why he should not be removed from the service. The petitioner submitted his reply to the said showcause notice immediately in the month of September, 1990. Thereafter respondent no. 2 the Disciplinary Authority herein, namely the Deputy Police Commissioner (West) Ahmedabad, passed the order dismissing the petitioner from the service and the period of suspension of the petitioner was to be treated as such.

2.1. Being aggrieved by the said order of the disciplinary authority dated 5th December, 1990, the petitioner preferred appeal before the Appellate Committee, namely, Police Commissioner, Ahmedabad City respondent no. 1 herein, wherein charge no. 1 with regard to bigamy was believed by the Appellate Authority. However, so far as activity of involvement of the petitioner in Trafficking of woman is concerned, the Appellate Authority did not find any evidence worth for imposing any penalty for the same. Moreover, the Appellate Authority has believed the documentary evidence as well as the statement of Bai Sharda and other witnesses, as genuine and strong evidence and, thus, the order of dismissal passed by Disciplinary Authority was confirmed by the Appellate Authority and the appeal filed by the petitioner was rejected.

3. Learned advocate Shri Patel for the petitioner has challenged both the orders on the ground that the orders are devoid of merits and contrary to the evidence on record. Learned advocate has further submitted that the certificate of marriage which was relied upon by the

respondents to the effect that the petitioner conducted marriage on 2nd March, 1980 with Shardaben is not genuine document and no reliance can be placed upon such document. He further submitted that before 14th May, 1986, when the petitioner married one Smt. Kalpaba, the petitioner was unmarried and, therefore, he has not committed any offence punishable even under Section 494 of the Indian Penal Code. Learned advocate has further submitted that the document of registration of marriage of the petitioner was fake and looking to the School Leaving Certificate annexed by the petitioner, it shows the date of birth of the petitioner as 14th February, 1964. Under these circumstances, it is clear that the petitioner was not involved in the charges as stated and believed by the Disciplinary Authority. Learned advocate has further submitted that the inquiry initiated against the petitioner was not based on the sound principle of law of evidence and the petitioner ought to have been exonerated and, therefore, the impugned order dated 5th December, 1990 passed by the Disciplinary Authority and confirmed by the Appellate Authority vide order dated 18th February, 1991 are arbitrary, unreasonable and violative of Article 14 of the Constitution of India and requires to be quashed and set aside.

3.1. As against that learned A.G.P. Ms. Shah appearing for the respondents has vehemently submitted that the concurrent findings of facts are against the petitioner and there is no reason for this Court to exercise extra ordinary powers under Article 226 of the Constitution in favour of the petitioner by interfering with the evidence already recorded and/or to appreciate the evidence as recorded and with the findings of facts arrived by the Disciplinary Authority as well as Appellate Authority in light of the Certificate of Registration of Marriage of the petitioner issued by the Statutory Authority, which is just and legal and no suspicion or doubt can be raised about the correctness or genuineness of the said document. She has further submitted that the petitioner being a Government servant and a Member of Disciplinary Force, has committed misconduct and the very proof is evidenced in the form of said certificate, which was believed by the Disciplinary Authority as well as the Appellate Authority. She has further submitted that the charges levelled against the petitioner are very serious and unfortunately, the charge of involvement of the petitioner in trafficking of woman which is proved before the Inquiry Officer and believed by the Disciplinary Authority was not ultimately appreciated by the Appellate Authority and the petitioner was allowed to go scot-free against the said charge.

However, she has submitted that the evidence with regard to bigamy i.e. second marriage of the petitioner is already proved by the statements of certain witnesses more particularly, of Bai Sharda and one Kusumben which clearly establishes the fact about the bigamy. She has drawn my attention to the showcause notice dated 14th September, 1990, whereby, clear reasonings have been given by the Disciplinary Authority for not agreeing with the finding of the Disciplinary Authority, on the ground that Bai Sarda had already identified the delinquent and she has clearly stated that out of wedlock with the petitioner, they had one daughter named Sonal.

3.2. Thus, according to learned A.G.P. Ms. Shah, it is conclusively established that the petitioner has committed misconduct of bigamy. Not only that but even in the case for involvement of trafficking woman, was also evident from the record of the case. She has further submitted that the orders with regard to dismissing the petitioner passed by Disciplinary Authority and confirmed by the Appellate Authority, are just and proper and no illegality or arbitrariness is committed in exercising powers by both the authorities, Thus, this Court will not be exercising power under Article 226 of the Constitution of India to draw out conclusion then already in existence.

4. Heard the learned advocate for the parties. I am in full agreement with the submissions made by learned A.G.P. Ms. Shah. Looking to the evidence on record and the reasonings given by the Disciplinary Authority for imposing punishment of dismissal upon a member of disciplinary force, this is not a fit case, where this Court should exercise extra ordinary powers under Article 226 of the Constitution of India, so as to appreciate the evidence and to oppose the findings of the Disciplinary Authority as confirmed by the Appellate Authority in view of the fact that Certificate of Registration of the Marriage of the petitioner clearly establishes second marriage of the petitioner and it is a case of bigamy which is not permitted by law of the land and it is proved misconduct on behalf of the petitioner.

4.1. Further the punishment of dismissal imposed by the Disciplinary Authority of dismissing him from the service and as confirmed in Appeal, is also just and proper punishment and it is unfortunate that the Appellate Authority failed to appreciate the involvement of the petitioner in the trafficking of woman which was believed by the Disciplinary authority in order dated 5th December, 1990.

5. In view of the aforesaid discussions and observations, the petition fails and rule stands discharged. No order as to costs.

[ANANT S. DAVE, J.]
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